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Of Attorneys for Creditor, CNH Capital America LLC

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

**Eugene Tyrone Alwine,**

Debtor.

Chapter 13

No. 09-39313-rld13

**OBJECTION TO CONFIRMATION OF  
CHAPTER 13 PLAN DATED NOVEMBER  
23, 2009**

Hearing Date: January 28, 2010  
Hearing Time: 9:00 a.m.  
Hearing Location: US Bankruptcy Court,  
Courtroom # 3

CNH Capital America LLC (“CNH”) objects to confirmation of the debtor’s proposed Chapter 13 Plan dated November 23, 2009 (the “Plan”), on the grounds that it does not accurately state the full amount of CNH’s claim. In support of this objection, CNH alleges as follows:

1. On or about August 2, 2005, debtor Eugene Tyrone Alwine (“Alwine”) executed a Retail Installment Contract and Security Agreement for the purchase of a Hitachi Excavator, Model EX120-3, serial number 42564 (“2005 Agreement”). Under the terms of the 2005 Agreement, Alwine agreed to make monthly payments of \$653.35 beginning on September 15, 2005, with

1 a final payment of \$652.67 due on August 15, 2010.

2 2. On or about November 30, 2004, 9-Mile Construction & Excavation, Inc. (“9-  
3 Mile”), Alwine’s company, executed a Retail Installment Contract and Security Agreement for  
4 the purchase of a Takeuchi Track Loader, Model TL130, serial number 21301629 (“2004  
5 Agreement”). Under the terms of the 2004 Agreement, 9-Mile agreed to make four monthly  
6 payments in the amount of \$709.14 beginning on January 14, 2005, with a final payment of  
7 \$708.83 due on or before December 14, 2009.

8 3. On or about March 7, 2006, Alwine executed a Retail Installment Contract and  
9 Security Agreement on behalf of 9-Mile for the purchase of a Takeuchi Excavator, Model  
10 TB145, Serial Number 14514744 (“2006 Agreement”). Under the terms of the 2006 Agreement,  
11 9-Mile agreed to make monthly payments in the amount \$954.54 beginning on April 20, 2006,  
12 with a final payment of \$954.09 due on or before March 20, 2011.

13 4. The Agreements are cross collateralized. At the time of filing, Alwine owed  
14 \$46,826.57.

15 5. In paragraph 2 of the Plan, Alwine lists the value of CNH’s collateral as  
16 \$32,000.00.

17 6. CNH objects to the confirmation of the Plan and its treatment of the collateral  
18 securing the 2004 Agreement and the 2006 Agreement (collectively, the “9-Mile Agreements”)  
19 on the basis that Alwine does not have an interest in the collateral secured by the 9-Mile  
20 Agreements. In paragraph 2 of the Plan, Alwine identifies the Takeuchi Track Loader TL130 as  
21 collateral of the bankrupt estate. Alwine, however, does not have an interest in the collateral  
22 securing the 2004 Agreement because 9-Mile, not Alwine, executed the 2004 Agreement.  
23 Similarly, in paragraph 2 of the Plan, Alwine identifies the Takeuchi Excavator TB145 as  
24 collateral of the estate. Likewise, Alwine lacks any interest in the collateral securing the 2006  
25 Agreement as 9-Mile executed the 2006 Agreement. CNH reserves the right to pursue its  
26 remedies against 9-Mile under the 9-Mile Agreements.

1           7.       In the event that the court finds that Alwine has an interest in the collateral  
2     securing the 9-Mile Agreements, CNH objects to confirmation of the Plan on the basis that the  
3     value of CNH's collateral is \$53,500.00. CNH is entitled to payment of the full amount of its  
4     claim, plus post-confirmation interest at the rate of 9.5% per annum.

5           8.       Notwithstanding the court's treatment of the 9-Mile Agreements, CNH further  
6     objects to confirmation of the Plan on the basis that the value of CNH's collateral under the 2005  
7     Agreement is \$28,000.00. CNH is entitled to payment of the full amount of its claim, plus post-  
8     confirmation interest at the rate of 9.5% per annum.

9           Dated this 25th day of January, 2010.

10                               SCHWABE, WILLIAMSON & WYATT, P.C.

11  
12                               By:     /s/ Alex I. Poust  
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OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN:

by delivering a true and correct copy thereof via ECF to:

- PATTI H BASS      [ecf@bass-associates.com](mailto:ecf@bass-associates.com)
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DATED this 25<sup>th</sup> day of January, 2010.

/s/ Alex I. Poust  
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